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No. 86-1866

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

STATE OF ALABAMA,
Petitioner

v.

RICHARD LYNG, SECRETARY OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE,

and

MARY PHILILPS, *et al.*,
Resopndents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITIONER'S REPLY BRIEF

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The Secretary of Agriculture, in his opposing brief, raises for the first time, a decision of this Court, *South Dakota v. Dole, Secretary, United States Dep't of Transportation*, 483 U.S. ——, 97 L.Ed.2d 171, 107 S.Ct. —— (1987), which was decided after the State of Alabama filed its petition for a writ of certiorari. This reply brief is filed, therefore, pursuant to Rule 22(.5), Supreme Court Rules, to address the new matter raised by the *Dole* decision which was not available to the Petitioner at the time of filing the petition.

The Secretary relies heavily on *South Dakota v. Dole* and describes the case as a confirmation that Congress acted within its constitutional authority when it conditioned state participation in the Food Stamp Program on

the state's agreement not to tax purchases of food made with food stamps. More accurately, the decision confirms that Congress may impose reasonable conditions on federal grants provided the pressure placed on the state is not coercive. Contrary to the Secretary's argument, the *Dole* decision gives no indication that Alabama is not unconstitutionally coerced into relinquishing its sovereign power to tax.

In response to the State of Alabama's contention that it is coerced to comply with the conditions imposed by Section 1505, the Secretary argues that "[t]his Court rejected the identical argument in *Dole*." (Res. Brief, 6). This statement is incorrect because the circumstances in question in these cases are very different. In *Dole*, the state was required to raise the legal drinking age to 21 or the state would forfeit federal highway funds otherwise allocable to the state. In this case, however, the State of Alabama is faced with losing a long-standing food benefit program involving hundreds of millions of dollars which benefits over 12% of its population if it refuses to relinquish its right to tax purchases of food made with food stamps. The circumstances of these two cases can hardly be described as identical.

In addition, the Secretary's argument that "this Court has never indicated that a condition is coercive simply because entitlement to an entire federal grant is dependent upon compliance with the condition" (Res. Brief, 7), is an incorrect statement of the issue and misses the point. The question is whether Congress has taken advantage of the Food Stamp Program to coerce the state to relinquish its right of taxation. Indeed, *Dole* confirms that congressional action is invalid when it is coercive:

> Our decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which "pressure" turns into compulsion.

South Dakota v. Dole, 97 L.Ed.2d at 181, quoting *Steward Machine Co. v. Davis*, 301 U.S. 548 at 589-590 (1937).

The circumstances in *Dole* simply did not reach the critical point of compulsion.

A comparison of the two cases, made by the Secretary, is strained. The financial inducement offered by Congress in *Dole* amounted to only "5% of the funds otherwise obtainable under specified highway grant programs." *South Dakota v. Dole*, 97 L.Ed.2d at 181. This Court described the inducement in *Dole* as "relatively mild encouragement to the states to enact higher minimum drinking ages than they would otherwise choose." *Id.* In contrast, the State of Alabama is faced with losing $287 million in food stamp benefits to over 12% of the state's population if Alabama refuses to relinquish its right to tax purchases of food made with food stamps.

Although this Court continues to agree that there is a limit to Congress' right to impose conditions on federal-state grants, this Court has yet to identify that limit. The pressure placed by Congress on the states by this Act is of a much higher degree than that in the other cases which this Court has reviewed. If ever there was a case where "pressure turns into compulsion," it is this case where the State of Alabama is threatened with the termination of a 12-year-old social welfare program upon which so many of the state's needy residents have become dependent.

Respectfully submitted,

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